IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 52.

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC.,
Petitioner,

v.

THE UNITED STATES OF AMERICA.

BRIEF FOR PETITIONER.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OPINION OF THE COURT BELOW.

(R. 42-46.)

JURISDICTION.

The judgment of the Court below was entered on February 19, 1945 (R. 47), the Court granting Writ of Certiorari March 15, 1945 (R. 48-49). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, p. 1, 43 Stat. 938.

STATUTES INVOLVED.

District of Columbia Incorporation Act of Petitioner, Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599.

The petitioner, the Better Business Bureau of Washington, D. C., Inc., was organized under the Laws of the District of Columbia (Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599), on the 10th day of August, 1920, commonly known and referred to as articles concerning "benevolent, charitable, educational, literary, musical, scientific, religious, or missionary program, the material part of which reads as follows:

> "SEC. 599. Certificate.—Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgements of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—
>
> First. The name or title by which such society shall be known in law.
>
> Second. The term for which it is organized, which may be perpetual.
>
> Third. The particular business and objects of the society.
>
> Fourth. The number of its trustees, directors, or managers for the first year of its existence." • • •

Social Security Act Exemption Clause, 49 Stat. 620, c. 531, otherwise known as Sec. 811.

"Sec. 811. When used in this title—

• • • • • • • • •

"(b) The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except—

"(8) Service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Internal Revenue Code:

SEC. 1426. DEFINITIONS.

When used in this subchapter—

• • •

(b) *Employment.*—The term 'employment' means any service of whatever nature, performed within the United States by an employee for his employer, except—

• • • • • • • • • •

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual (26 U. S. C. 1940 ed., Sec. 1426)."

Treasury Regulations 91, promulgated under Title VIII of the Social Security Act:

ART. 12. *Religious, charitable, scientific, literary, and educational organizations and community chests.*—Services performed by any employee of an organization of the class specified in section 811 (b) (8) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

* * * * * * * * *

An educational organization within the meaning of section 811 (b) (8) of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 811 (b) (8) of the Act.

The provisions of Section 402.215, Treasury Regulations 106, promulgated under the Federal Insurance Contributions Act (Sections 1400-1431 of the Internal Revenue Code) are substantially the same as those of Article 12, Treasury Regulations 91.

District Unemployment Exemption Statute, Sec. 1, par. B, sub-chap. 1, Act of August 28, 1935, 49 Stat. 947.

The exemption contained in the Federal Social Security Act, *supra*, appears to be identical in terms with the exemption contained in the District of Columbia Unemployment Compensation Act of August 28, 1935, 49 Stat. c. 794, § 3, and amendments thereto, the material part of which reads as follows:

"* * * (b) The Term 'employment' means any service, of whatever nature, including employment in interstate commerce, performed after December 31, 1935, within the United States, by any individual under any contract of hire, oral or written, express or implied, so long as the greater part, as determined by the Board under regulations prescribed by it, of the service performed under such contract is performed within the District, except—* * *

"* * * (7) service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; * * *",

STATEMENT OF CASE.

The agreed statement of facts filed in this case shows that the petitioner, the Better Business Bureau of Washington, D. C., Inc., was organized under the Laws of the District of Columbia (Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599), on the 10th day of August, 1920, commonly known and referred to as articles concerning "religious, educational and benevolent corporations." The purposes set forth in the Articles of Incorporation are:

"* * * the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to

successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as 'An Act to prevent fraudulent advertising in the District of Columbia.'" (R. 9-10)

The Bureau was not organized for profit and it has no shares of stock. The operation of the Bureau does not inure to the benefit of any private shareholder or individual, it pays no dividends, and makes no refunds or disbursements to any person interested. Information that it has compiled is available to any one, and it makes no charge for any information furnished. There is no discrimination between members or non-members. It urges the public "Before you invest, investigate," and anyone who takes the trouble to inquire may have all the information that the Bureau has available or can obtain. (R. 10)

The money to carry on the work of the Bureau is raised by voluntary subscription or membership fees from interested people. There is no fixed membership fee. One individual or company may contribute $25.00, while another may contribute $100.00 or more. Its budget for the years of 1936 to 1941 inclusive differed in various amounts for its complete operation under its charter. The entire sum of the aforesaid budget was raised by contributions and none of it was defrayed by fees or charges made in connection with the service that it rendered to the various individuals, companies or the public who took advantage of its activities. (R. 10-11)

Its directors are elected annually from the membership, consisting of prominent men from all walks of life. Its officers are elected by the directors. They have nominal duties and are paid no salary. The only paid employees are the Manager or Director and a limited number of employees serving under him. This is an action to recover the amount of taxes paid under the Federal Social Security Act. In carrying out its charter purposes, the Bureau's

work is divided roughly into five subdivisions. These are (1) Fraud Prevention, (2) the fighting of Fraud, (3) the elevation of business standards by education thereof, (4) the education of the consumer as a buyer, and (5) furnishing information and aid to various agencies of the Governments of the District of Columbia and the United States. (R. 11)

(1) In the Fraud Prevention work, the purpose is to educate and warn them of plans and schemes of various types of swindlers. Most of this education is by answering specific inquiries. The Bureau shows the Public what information it has and when the facts are made available to the prospective victim the swindle usually appears rather obvious to even an uneducated person. A substantial part of this fraud prevention work has been in cooperation with newspapers and radio networks who, when the Bureau shows them that the prospective advertiser is a swindler, refuses the advertisement, thus limiting materially the opportunity of the swindler to contact his prospective victim. (R. 11)

(2) In Fraud fighting, general and abstract fraudulent practices are brought to the attention of the public. The education is carried on through newspaper stories, radio talks, bulletins and posters. These are addressed to the public in general and are not in any way limited to the members. In many instances schemes are killed and do not have a chance to occur here because the public were educated to these schemes. (R. 11)

(3) The third class of work which the Bureau attempts to do is the elevation of business standards. The purpose of this is to teach merchants that applying the doctrine of caveat emptor is not good business. In educating merchants that misleading advertising, extravagant claims and price comparisons are not good business, the Bureau, not representing any merchants and having no axe of its own to grind, is in a peculiarly advantageous position in talking

with the merchants. The education of merchants to raise their business standards and ethics may be by meetings attended by "chain stores, independents, and every type of merchant" where the follies of dishonest or at least unethical merchandising are pointed out and where a constructive, voluntary plan of honest advertising is advocated, and which frequently results in the merchants adopting "a program and the elimination of comparative prices, all in the interest of public confidence." (R. 11-12)

(4) The Bureau takes the public as its pupils in its fourth class of educational work. The Bureau believes that the public as a consumer has as much interest in our economic scheme as business men have, and that the public and the business man should work together for a better understanding of each other's problems. This education comes through talks by the manager and assistant manager to groups of individuals, and it is also carried on through the Bureau's bulletins and by newspaper stories and radio addresses.

The consuming public must be educated against fraudulent practices and must be educated to inquire from some reliable, disinterested source before its money is spent or before it becomes involved in any unknown or doubtful proposition. If the consuming public spends its money unwisely, it is a loss not only to the consumer, but to everyone else. (R. 12)

(5) In addition to the four primary educational purposes, the Bureau cooperates with the various governmental agencies interested in law enforcement, as follows: United States Federal Trade Commission, United States Post Office, Department of Justice, and certain War Emergency Agencies, etc., Health Department, License Bureau, Insurance Department, etc., of the District of Columbia.

This work does not involve any duplication of these Agencies' services, but aids in their efficient operation. The Bureau is in an excellent position to giv proof to those agencies of schemes which they will want to know about in order to take immediate action to protect the public. The

Bureau has nothing whatever to do with the enforcement of the law; that is the duty of the above mentioned various government agencies.

There are some eighty-five other Better Business Bureaus in the United States. The purpose of each Bureau is very much the same and each Bureau exchanges information with other Bureaus, but each is independently operated by local citizens and all the expenses are likewise defrayed by local citizens.

This petitioner has never indulged in any political activities nor does it have anything whatsoever to do with same. (R. 12-13)

The petitioner's position is that it is an educational institution within any commonly accepted definition of "educatonal" and was and is exempt from taxation under the Federal Social Security Act, Chap. 531, 49 Stat. 620, Sec. 811.

The Appellate Court below refused to accept the Petitioner's contention and accordingly held that it was not an organization organized and operated exclusively for educational or scientific purposes within the meaning of the exemption contained in Section 811 of the Federal Social Security Act, *supra*, and therefore not entitled to the relief it sought, thereby subjecting it to the payment of the Social Security Taxes in ques. n.

SPECIFICATION OF ERRORS.

The United States Court of Appeals erred:

1. In rendering judgment for Respondent (appellee in lower court), by holding that your petitioner is not entitled to the exemption as an organization organized and operated exclusively as an educational or scientific institution within the meaning of Sec. 811 (b) (8) c. 531, 49 Stat. 620 of the Federal Social Security Act approved August 14, 1935, as amended. (R. 42-46)

2. The decision of the lower court is contrary to the agreed facts, which proves clearly that the petitioner is an institution organized and exclusively operated for educational or scientific purposes, and was properly incorporated under the Statute of the District of Columbia, created for institutions of this character, Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599. (B. 2)

3. The Record will show that the petitioner has met every requirement of the exemption contained in the Federal Social Security Act above cited and therefore entitled to the relief it seeks. (R. 9-14)

STATEMENT OF THE POINT INVOLVED.

There is no dispute of fact involved in this case; the sole question to be decided by this Court is one of law, "is the petitioner, on the facts in this case, a corporation organized and operated exclusively for educational or scientific purposes and entitled to the benefit of the exemption from Federal Social Security Taxes contained in Section 811 of the Federal Social Security Tax Law, of August 14, 1935"?

SUMMARY OF ARGUMENT.

Exemption is claimed on behalf of petitioner from taxation under the provisions of the Exempting clause in Chap. 531, 49 Stat., 620, Section 11 (of the Federal Social Security Act) as it is contended that the petitioner was organized and operated exclusively as an Educational Institution during the taxing period.

Construction of the Statute by this Court should be such as will give the petitioner the benefit of the Exemption Clause of Chap. 531, 49 Stat., 620 (Section 11 of the Federal Social Security Act), as the definition of the term "Educational" as defined by the late decisions of the Courts is of such a nature that will justify awarding the exemption to petitioner, whether it is a strict or liberal construction of the verbiage contained in the act:

(a) On the Taxing Statute.

(b) On Departmental Construction.

(c) On the legal definition of Charitable and Educational.

The petitioner is an Educational or Scientific Institution and operated exclusively as such within the meaning of the law, and is a conclusion justified by the agreed statement of facts and supporting authorities.

Comment on the decision of the lower court denying the petitioner the exemption sought as an "Educational or Scientific" Institution shows, we believe, that such lower court is in error in rendering judgment for the defendant as the result of adverse construction of the exemption clause of the taxing act in question.

ARGUMENT.

Exemption is Claimed from Taxation Under the Federal Social Security Act.

The pertinent section, that is Chapter 531, 49 Stat. 620, Sec. 811, reads as follows:

> "When used in this title, * * *
>
> "(b) The term 'employment' means any service of whatever nature, performed, within the United States by an employee for his employer, except * * *
>
> "(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

With respect to the above exemption contained in the Social Security Act aforesaid, Treasury Regulation 91 was promulgated thereunder. (B. 3-4)

It appears to be clear that the Federal Social Security Act and the regulation promulgated thereunder proposes three (3) tests: it must be organized and operated exclusively for one of the exempt purposes—in this instance, educational or scientific. Reference to the charter purposes hereinbefore quoted shows that the purpose for which the Bureau was organized was educational and scientific, and a reading of the statement of facts agreed upon in this case shows that it is operated exclusively for the purpose for which it was chartered. The second test is that there must be no benefit to private shareholders or individuals. The third test is no substantial part of the activities shall be carrying on propaganda, or otherwise attempting, to influence legislation. The facts in the case clearly show that these tests have been satisfactorily met and further that the petitioner has indulged in no political activities directly or indirectly whatsoever, and is therefore entitled to the relief it seeks.

CONSTRUCTION.

We contend that the Social Security exemption clause in question here is clear and unambiguous, and that a proper application of the facts in this case to such exemption clause will give the relief sought by the petitioner in the instant case.

Supporting this contention are the following decisions of the Courts:

(a) On the Taxing Statute.

In *Wellman* v. *Bethea*, 243 F. 222, it was held:

> "In construing a statute, the court must ascertain the intention of the legislature but such intention must be ascertained from the words used in the statute and the subject-matter to which it relates."

As Judge Hand said in *Slocum et al.* v. *Bowers*, District Court, 15 F. (2d) 400-403:

> "* * * The policy of exempting these corporations is firmly established and has been continuously expand-

ing ever since the system of income taxation was adopted. The statute should be read, if possible, in such a way as to carry out this policy and not to make the result turn on accidental circumstance or legal technicalities." * * *

Union & New Haven Trust Company v. *Eaton*, 20 F. (2d) 421, approved in *U. S.* v. *Proprietors of Social Law Library*, 102 F. (2d) 481—

"* * * (3) The rule of strict construction is in the interest of public policy, and when a higher public policy dictates a more liberal attitude, an exception will be found. Bequests for public purposes operate in aid of good government; they perform by private means what ultimately would have to be done at public expense. In such cases, exemption from taxation is not a matter of grace or favor; is rather an act of public justice. The reason for the rule of narrow scrutiny does not apply to such cases. * * *"

United States v. *Rosenblum Truck Lines, Inc.*, 315 U. S. 50, 86 L. ed. 671, 62 S. Ct. 445:

"* * * Where the plain meaning of words used in a statute produces an unreasonable result, plainly at variance with the policy of the legislation as a whole, the purpose of the statute rather than the literal words should prevail. * * *"

(b) On Departmental Construction.

Neuberger v. *Commissioner of Internal Revenue*, 311 U. S. 83, 85 L. ed. 58, 61 S. Ct. 97:

"* * * Although rulings of the Treasury Department are entitled to great weight in the construction of a Federal income tax statute, they cannot narrow the scope of the statute when Congress has plainly intended otherwise. * * *"

United States v. *Pleasants*, 305 U. S. 357-363, 83 L. ed. 217-221, 59 S. Ct. 795:

"* * * We observed in the Bliss Case that the exemption of income devoted to charity and the reduction of the rate of tax on capital gains 'were liberalizations of the law in the taxpayer's favor, were begotten from motives of public policy, and are not to be narrowly construed.'' That observation is equally pertinent here.

"The administrative construction invoked by the Government has not been of a sufficiently consistent character to afford adequate support for its contention. * * *"

Regulations issued by a governmental department to which the administration of a statute is committed may not extend the statute or modify its provisions.

Texas & Pacific Railway Company v. *United States*, 289 U. S. 627, 77 L. ed. 1410, 53 S. Ct. 768.
Koshland v. *Helvering*, 298 U. S. 441, 80 L. ed. 1268, 56 S. Ct. 767.
M. E. Blatt Company v. *United States*, 305 U. S. 267, 83 L. ed. 167, 59 S. Ct. 186.

The rule that a definite settled administrative construction of the statute is entitled to the highest respect does not apply in cases where the construction is not doubtful or in other words executive construction cannot change the unambiguous language of a statute.

Louisville & Nashville Railroad Company v. *United States*, 282 U. S. 740, 75 L. Ed. 672, 51 S. Ct. 297.
Norwegian Nitrogen Products Company v. *United States*, 288 U. S. 294, 77 L. ed. 796, 53 S. Ct. 350.
Alaska Steamship Company v. *United States*, 290 U. S. 256, 78 L. ed. 302, 54 S. Ct. 159.

And quoting from: *Haggar Company* v. *Helvering*, 308 U. S. 389, 84 L. ed. 340, 60 S. Ct. 337—

"* * * A Treasury regulation which amounts to a compliance with the supposed command of a statute will not be followed by the court in construing the stat-

> ute, where the regulation flies in the face of the purposes of the statute and the plain meaning of its words does not embody the results of any specialized departmental knowledge or experience, and no one will be prejudiced by its rejection. * * *"

It has been decided and settled by the courts that a departmental construction which does violence to the exemption clause of the statute, as contended in the case at bar, is unreasonable and deprives institutions of this character of the benefit of the exemption, which we think it was clearly the intention of Congress to give, in fact mandatory on account of the clear and unambiguous wording of the exemption clause of the statute.

(c) On the Legal Definition of Charitable and Educational.

The term "charitable" is a generic term and includes literary, religious, scientific and educational institutions. As the Court said in *Missouri Historical Society* v. *Academy of Science*, 94 Mo. 459, 8 S. W. 346, cited in *Simmons et al.* v. *Fidelity National Bank and Trust Company of Kansas City, et al.*, 8th Cir., 64 F. (2d) 602:

> "Any gift not inconsistent with existing laws, which is promotive of science, or tends to the education, enlightenment, benefit, or amelioration of the condition of mankind, or the diffusion of useful knowledge, or is for the public convenience, is a charity * * * (94 Mo. 459, 8 S. W. 346-8)

The accepted rule of law is that: activities of a charitable, scientific or educational corporation are "exclusively" for such purposes when those activities are incidental, adhere to, advance and are mediate to the primary purpose.

W. Trinidad, Insular Collector, v. *Sagrada Orden de Predicadores, etc.* (1924), 263 U. S. 578, 68 L. ed. 458.

Slee v. *Commissioner of Internal Revenue* (C. C. A. 2, 1930), 42 F. (2d) 184.

Girard Trust Co. et al. v. *Commissioner of Internal Revenue* (C. C. A. 3, 1941), 122 F. (2d) 108; 41 B. T. A. 157.

Faulkner v. *Commissioner of Internal Revenue* (C. C. A. 1, 1940), 112 F. (2d) 987; 41 B. T. A. 875.

The Court below gave too restricted a meaning to the term "educational purposes".

Education on economic subjects is not beyond the statutory exemption and educational activities need not be confined to any particular kind of education nor restricted to any particular class of persons.

Jones, Collector of Internal Revenue v. *Better Business Bureau of Oklahoma City, Inc.* (C. C. A. 10, 1941), 123 F. (2d) 767 @ p. 769.

Cochran v. *Commissioner of Internal Revenue* (C. C. A. 4, 1935), 78 F. (2d) 176.

Leubuscher v. *Commissioner of Internal Revenue* (C. C. A. 2, 1932), 54 F. (2d) 998.

Weyl v. *Commissioner of Internal Revenue* (C. C. A. 2, 1931), 48 F. (2d) 811.

Also see to the same effect *St. Louis Union Trust Company et al.* v. *Burnett*, 8th Circuit, 59 F. (2d) 922-9.

The Court below gave too restricted a meaning to the word "charitable" which includes the field of "educational."

The statutory exemption includes the purpose "charitable or educational."

"Charity", said the Illinois Supreme Court in *The People ex rel. Albert N. Nelson, County Collector* v. *The Rockford Maconic Temple Building Association* (1932), 348 Ill. 567, at p. 572, "may be applied to almost anything that tends to promote the well doing and well being of social man." See also: *The People ex rel. Harry W. Greer, County Collector* v. *The Thomas Walters Chapter of the Daughters of the American Revolution* (1924), 311 Ill. 304; *Elizabeth C. Ould* v. *The Washington Hospital for Foundlings* (1877), 95 U. S. 303, 24 L. ed. 450.

The United States Circuit Court of Appeals for the First Circuit (*United States* v. *Proprietors of Social Law Library* (C. C. A. 1, 1939), 102 F. (2d) 481) in construing the Federal exemption provisions of the Revenue Act of 1934 (p. 483):

> "Any gift, not inconsistent with existing laws, which is promotive of science, or tends to education, enlightenment, benefit or amelioration of the condition of mankind, or diffusion of useful knowledge, or is for public convenience, is a charity." * * *

International Reform Federation v. *District Unemployment Compensation Board* (U. S. C. A. D. C. 1942), 131 F. (2d) 337 at p. 339,

> "* * * That Congress had in mind these broader definitions is confirmed by the words used in the Act, for by its terms it embraces religious, charitable, scientific, literary, or educational corporations, thus including within the exemption clause every non-profit organization designed and operating for the benefit and enlightenment of the community. * * *".

In a legal sense the term "charity" is not confined to mere almsgiving or to the relief of poverty and distress, but embraces the improvement and happiness of man.

The People ex rel. L. R. Wagner, County Collector, v. *The Freeport Masonic Temple, Inc.* (1931), 347 Ill. 180;
The Congregational Sunday School and Publishing Society v. *Board of Review* (1919), 290 Ill. 108;
The School of Domestic Arts and Science v. *P. J. Carr, County Collector* (1926), 322 Ill. 562.

The best late definition we have been able to find anywhere of an educational organization is that contained in Judge Vaught's opinion in the case of *Better Business Bureau of Oklahoma City, Inc.* v. *Jones, Collector*, 34 Fed. Supp. 573, decided July, 1940:

"* * * Educational training is not confined to colleges, universities or even the public schools but consists, in the broadest sense, of acquiring information or inspirational suggestions which cause the individual to think and act along proper lines. Certainly, the teaching of honesty, integrity, and truthfulness is the very highest objective of an education." * * * Approved by U. S. Circuit Court of Appeals, 123 F. (2d) 767.

The lower court in the previous case of the *International Reform Federation* v. *District Unemployment Compensation Board* (131 F. (2d) 337; 71 W. L. R. 43), clearly defines "educational" for taxation exemption as follows:

"* * * Charity in its legal sense comprises trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the previous heads. * * *"

The late decisions of the Courts certainly show a tendency, if anything, to broaden the definition of an "educational institution," to meet the existing social conditions.

THE BETTER BUSINESS BUREAU OF WASHINGTON, D. C., IS AN EDUCATIONAL INSTITUTION WITHIN THE MEANING OF THE EXEMPTION CONTAINED IN THE FEDERAL SOCIAL SECURITY ACT.

The petitioner could only incorporate under Section 599 of the Code of Law of the District of Columbia on account of it being an educational and scientific institution and were it only a civic institution as decided by the lower court, such as a Board of Trade or any other strictly civic business organization, it would have been required to incorporate under Section 701 of sub-chap. 8 of the Code of Law of the District of Columbia (R. S. D. C. Secs. 605-612, 617; Comp. Stat. D. C. pp. 133 et seq.), or other sections of the Code of Law of the District of Columbia than that un-

der which it was created as previously stated herein, applicable to petitioner.

The facts in the case show that the petitioner's activities under its corporate powers places it clearly in a class of corporations organized and operated exclusively to the furtherance of educational and scientific purposes and education on economic or business questions promoted by it which was directly in furtherance of educational and scientific purposes exclusively.

It also appears that an error was committed by the lower court in not holding that Regulation 91 (M. 3-4) promulgated by the Commissioner of Internal Revenue shortly after the passing of the Social Security Act (Sec. 811) (B. 2-3) was indefinite and incomplete with respect to giving the petitioner the benefit of the exemption clause aforesaid, for the reason we think it will be clearly determined upon reading such Regulation, as it does not specifically preclude this petitioner or like institutions from the benefit of the exemption, although it is, we claim, indefinite and does not take into consideration educational or scientific institutions of a modern character or practice which meet the present day conditions or requirement of public policy.

It should be borne in mind that this Regulation 91 aforesaid is the only one promulgated and this has been the first opportunity to test the propriety, reasonableness, and practicability of the same so far as petitioner and other similar institutions are concerned, and especially is this material in view of the fact as shown by decisions of the courts that the holdings or decisions of the Commissioner of Internal Revenue with respect to exemptions of charitable, educational or scientific institutions have been inconsistent or mixed in their character and have led the decisions of the Federal Courts to the inevitable conclusion that the line of construction adopted in many instances were erroneous and incorrect, which appears to have resulted in the mistaken theory adopted by the lower court in this case, in view of the undisputed facts.

The methods of the Bureau are purely corrective and preventive, and its educational work consists of teaching the public so that they may not become victims of plans or schemes intended to separate them from their money and its work is in no sense punitive or penal as it has nothing whatever to do with the enforcement of the law or any police activities.

Further, the education of the merchant, banker or business man is one of its important activities, teaching how to avoid misleading advertising and also teaching the business man the conduct of clean business methods and standards, which has proven of immense value to him and the public.

The educational program of this Bureau has proven of very great value to various agencies of both the District and Federal Government in furnishing aid and information to enable these agencies to carry on their work effectively, which also inures to the benefit of the public.

The Bureau indulges in no political activity whatsoever, either directly or indirectly. To the contrary, it serves its members and the entire public free from any persuasion, whether it be political, religious, racial, or whatnot.

The Bureau has no right to regulate business and it has no authority so to do. It does attempt, however, to persuade by education, merchants and other business men to improve their business ethics and methods and not to mislead the public by false or misleading advertisements, price comparisons or mis-statements as to the quality or type of merchandise being offered for sale, or other erroneous practices in the field in which they are engaged. If the merchant or business man insists upon doing these improper things all the Bureau will do is to give such matters publicity and educate the public to the fact that certain merchants or business men are attempting to take advantage of them.

We can find no cases involving Social Security tax as applying to educational institutions except the case of *Jones,*

Collector v. Better Business Bureau of Oklahoma City, Inc., supra, but there are numerous cases exempting charitable, educational and scientific institutions from different forms of Federal and State taxation, such as unemployment, income, estate and inheritance, and excise taxes, which we believe the Court are familiar with and need no citation here of them.

THE DECISIONS OF THE COURTS SHOW THE PETITIONER, THE BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC., IS AN EDUCATIONAL INSTITUTION, EXEMPT FROM FEDERAL SOCIAL SECURITY TAXATION.

The leading and important case which involved the refund of a "Social Security Tax" on the ground that the corporation was exempt as an educational institution and therefore exempt from taxation and we think controlling here, and in favor of the petitioner in the case at bar, is that of *Jones, Collector* v. *Better Business Bureau of Oklahoma City, Inc.*, 123 F. (2d) 767, decided October 31, 1941 by the United States Circuit Court of Appeals for the 10th Circuit. In fact this Appellate Court has decided that a Better Business Bureau (as they all operate throughout the United States practically in the same manner and method and under practically the same powers) "is an educational institution."

In the *Jones case* the appellee is the Better Business Bureau of Oklahoma City, Inc., and is a corporation or institution identical with that of the petitioner in this case and some eighty others throughout the United States. *The record in the Jones case* will show clearly it was organized exclusively for the same purposes as that of the petitioner here, that is "educational."

The Court found among other things, the following facts:

> "• • • To inform and to educate the public by various forms of publicity or otherwise, as to the difference between honest and legitimate advertising and that which

is misleading, dishonest and improper in order to create public confidence in honest and legitimate advertising and honest and legitimate business, and to prevent the public from being misled by persons using unfair advertisements or unfair business methods.

"By all proper means to educate and inform merchants, manufacturers and other business men as to honest, fair and legitimate advertising and business methods and the discouragements of unfair competition and unfair dealings with the public. * * *"

"* * * The Bureau carries on a continuous campaign of fraud prevention work. It warns the public against fraudulent plans and schemes. It endeavors to induce the local advertising agencies not to accept advertisements from the promoters of such plans and schemes. Through newspaper advertisements, radio talks, bulletins, and posters, it acquaints the public with fraudulent practices. It exposes specific fraudulent practices being carried on in Oklahoma City. It also endeavors to induce merchants to refrain from misleading advertising, extravagant claims, and price comparisons, and to conform to a high standard of business ethics. It endeavors to educate the consumer to buy wisely.

"Its services are rendered to nonmembers as well as members and are made available generally to the people in and about Oklahoma City. It also furnishes information to like Bureaus in other states." * * *

On the above mentioned facts the Court held as follows:

"* * * *While the general rule is that tax-exempt statutes are to be construed strictly in favor of the government, the rule does not apply to exemption statutes of the character here involved. Such a statute should be liberally construed so as to further rather than hinder its beneficent purpose.* The purpose of this exemption is to encourage religious, charitable, scientific, literary, and educational associations not operating for the profit of any private shareholder or individual. Education is defined in Webster's New International Dictionary, Second Edition, as follows: 'The totality

of the information and qualities acquired through instruction and training, which further the development of an individual physically, mentally, and morally.' It was defined by the Supreme Court of Nebraska in Ancient, etc. S. R. of Freemasonry v. Board of County Commissioners, 122 Neb. 586, 241 N. W. 93, 96, 81 A. L. R. 1166, as follows: 'Furthermore, lexicographers and the courts agree in defining 'educational' as pertaining to 'education.' The latter word taken in its full sense is a broad, comprehensive term and may be particularly directed to either mental, moral or physical faculties, but in its broadest and best sense it embraces them all, and includes not merely the instructions received at school, college or university, but the whole course of training—moral, intellectual, and physical.

* * *

" * * * It is a well-known fact that educators are now advocating high school training on the subject of intelligent buying.

Here, the purpose of the Bureau is to educate the public concerning fraudulent schemes and practices and to enable the members of the public to avoid such practices and to become better and more intelligent buyers, and to inculcate higher ethical standards in business practices and advertising. Business intercourse is an important activity of everyday life. The inculcating of higher standards and of business ethics on the part of the merchant, inducing the operators of advertising mediums to insist on honest advertising, acquainting the public with fraudulent schemes and practices, and informing the individual how he may avoid such practices and buy more wisely, while within a limited field, are, in our opinion, educational in character.

We, therefore, conclude that the Bureau is within the exemption, and that the judgment below should be affirmed." (Italics ours.)

The exemption contained in the District of Columbia Unemployment Compensation Act, the pertinent Section being 1, par. b, sub-chap. 7 of the Act of August 28, 1935, 49 Stat. 954, reads as follows:

"* * * (b) The term 'employment' means any service, of whatever nature, including employment in interstate commerce, performed after December 31, 1935, within the United States, by any individual under any contract of hire, oral or written, express or implied, so long as the greater part, as determined by the Board under regulations prescribed by it, of the service performed under such contract is performed within the District, except * * *

"* * * (7) service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; * * *"

We cite this exemption in the District of Columbia Unemployment Compensation Act as it is almost identical in its terms with that given such corporations or organizations in the Federal Social Security Act hereinbefore set out and by reason of its analogy and similarity to the provisions of the exemption contained in the Federal Social Security Act.

We again refer to the decision of the lower court in the case of the *International Reform Federation* v. *District Unemployment Compensation Board*, 76 App. D. C. 282, 131 F. (2d) 337, as we think it is persuasive in upholding our contention in the instant case.

The lower court in considering the exemption of a corporation under the aforesaid Section of the District Unemployment Compensation Act, as late as September 22, 1942 held:

"The differing condition, character and wants of communities and nations change and enlarge the scope of 'charity', and where new necessities are created, new charitable uses must be established.

"In excepting from the District of Columbia Unemployment Compensation Act service performed in the

employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, etc.. Congress included every nonprofit organization designed and operating for the benefit and enlightenment of the community, the state or the nation, or those organizations commonly designed 'charitable' in the law of trusts. D. C. Code Supp. V, T. 8, § 311 (b) (7).

"The International Reform Federation, whose principal purpose and activities were promotion of sociological reform, suppression of gambling and political corruption, substitution of arbitration and conciliation for both industrial and international war, suppression of the white slave traffic, harmful drugs and kindred evils, was exempt as a 'charitable or educational corporation' from District of Columbia Unemployment Compensation Act, and was not affected by incidental political activities. D. C. Code Supp. V. T. 8 § 311 (b) (7).

"In the enactment of the unemployment law in the District of Columbia it was within discretion of Congress to include charitable or educational institutions on the same terms as business or social organizations or if it included the former, to limit in such way as Congress thought proper the enjoyment of the preferred position, and the language of the act evinces a clear purpose to exclude charitable or educational institutions without limiting the enjoyment of their preferred positions and all that is requisite under the Act is that the institution claiming exemption shall be organized and operated exclusively for one of the named purposes. D. C. Code Supp. V, T. 8, § 311(b)(7).

"Where the District of Columbia Unemployment Compensation Act exempted service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, without including the limitation that no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, which appeared in other laws, intent of Congress was to make the exception apply where the primary

and exclusive purpose was religious, charitable or educational. D. C. Code Supp. V, T. 8, § 311 (b) (7). Application for writ of certiorari denied December 21, 1942 by the Supreme Court of the United States, 87 L. Ed. Adv. Opinions No. 5, p. 224."

The above decision is expressive of the trend of the courts to meet the modern and present day conditions which clearly brings the petitioner within the exemption sought from the Federal social security taxation.

Furthermore, on March 8, 1943, the lower Court approved the foregoing decision in the case of the National *Rifle Association of America* v. *District of Columbia Unemployment Compensation Board*, 77 App. D. C. 290, 134 F. (2d) 524, and the Appellate Court in this case dealt principally in its decision with the fact that the appellant elected to incorporate under the Laws of the State of New York under the section providing for the organization of "societies or clubs for certain social and recreation purposes" instead of the New York Statute which provided for the incorporation of "benevolent, charitable, scientific and missionary societies," while in the case at bar the petitioner did in fact incorporate under the section of the D. C. Code which provides only for the incorporation of "charitable, scientific, educational, and religious associations."

We contend that this late decision strengthens our claim that the lower court erred in arriving at its conclusion in the case at bar.

It may be contended by the Government that the powers and objects of the petitioner were set out differently in its charter, but even if some of the verbiage is different, we think our case comes clearly within the principles laid down in the *Jones* and *International Reform Federation cases, supra*, thereby entitling the petitioner to the exemption under the provisions of the Federal Social Security Act, as the facts in our case show the operation and activities of the petitioner are clearly within the realm of education of the pub-

lic. To say that this petitioner does not come within the provisions of such exemption and the principles of law laid down in the *Jones* and *International Reform Federation cases*, on account of the difference in the wording of the powers, we believe should not receive serious consideration of this Court. The scheme of all Better Business Bureaus throughout the entire United States, (not alone in this case), inherently results in the education of the public and necessarily so. It is a well known public fact that the primary object of all of these Better Business Bureaus is that they are organized to educate the public, irrespective of any difference in the verbiage creating their powers in their respective charters.

The above argument is supported in the decision of the lower Court in the case of *Hazen, et al., Commissioners of the District of Columbia* v. *The National Rifle Association of America, Inc.*, decided December 5, 1938, 69 D. C. App. 339, 101 F. (2d) 432. This Appellate Court held:

> "* * * To ascertain whether the property of a corporation is used for educational purposes within a tax exempt Statute, the Corporation must be judged not only by its declared objects, but also by what activities are actually carried on.
>
> "The primary use made of property determines whether it is exempt from taxation as used for educational purposes * * *"

Other cases can be cited upholding this doctrine, among them being numerous decisions along the lines of the *Chemist Club* v. *United States*, decided June 26, 1927, 64 Court of Claims 160, viz:

> "* * * If the criterion is the dominant feature of the organization it is not difficult to determine that the 'Chemist Club' is not a social club because its dominant purpose is that of a scientific or educational organization * * *"

In the above case the plaintiff sued and recovered a judgment for the refund of taxes. The Government attempted

to have the plaintiff classified as a social club on account of some of its activities but the Court exempted it from taxation as a scientific institution nevertheless.

The actual activities of a corporation showing whether or not it is organized for educational purposes or any other exempt purpose are important, when the same are within the powers as in the case at bar, so far as the judicial determination of the exemption is concerned, and in the *Hazen case, supra,* exemption was denied primarily on the ground that the corporation engaged in political and other non-educational activities.

This and other Better Business Bureaus throughout the United States are in their very nature also civic but that fact has not prevented the courts from exempting them from this or any other tax where their activities bring them within the exemption law, The fact of the matter is that in the *Jones* and *International Reform Federation cases,* the Government tried to show that these organizations were civic institutions and not educational ones and therefore not entitled to the exemption. This argument or theory of the Government was rejected totally by the United States Circuit Courts of Appeals in these cases.

The case at bar is identical with that of the decision of the United States Court of Appeals for the 10th Circuit in *Jones, Collector* v. *Better Business Bureau of Oklahoma City, supra.*

Petitioner relies upon the construction of the exemption clause of the Federal Social Security Act herein involved in the decision of the Court of Appeals for the 10th District in the *Jones Case, supra* (no application for writ for certiorari applied for), as it is believed to be a fair and correct judicial construction of such exemption clause, and therefore asks this Honorable Court to favor and adopt such construction of this law in the instant case, which would accordingly bring the petitioner within the benefit of the same as was, we believe, the intention of Congress.

ACTIVITIES OF PETITIONER ARE IDENTICAL WITH THOSE OF THE APPELLANT, THE BETTER BUSINESS BUREAU OF OKLAHOMA CITY, INC., AND OTHER BETTER BUSINESS BUREAUS THROUGHOUT THE UNITED STATES.

In the lower court we again call attention to the fact that it was urged by counsel for the government that the difference in the verbiage of the charter of the Better Business Bureau of Oklahoma City, Inc., *Jones Case, supra*, created a material difference in determining the exemption benefit of this petitioner, and it is very evident from the decision of the lower court that it did not give serious consideration to the government's claim (which same argument was used by it in answering the brief of the petitioner for application for petition for writ of certiorari), but nevertheless we desire to anticipate any such argument, if the Government uses the same in the case at bar, and therefore call this Honorable Court's attention to the following:

Supporting our contention, we believe we should call the Court's attention to the fact that the Better Business Bureaus operating in the United States, all operate in the same manner, although the wording of the powers contained in the various articles of incorporation of such organization may vary, but all such powers attempt to attain the same objective.

This is common knowledge and supporting the same we quote the powers conferred by the charter of the Better Business Bureau of Oklahoma City, aforesaid, which read as follows:

> "To inform and to educate the public by various forms of publicity or otherwise, as to the difference between honest and legitimate advertising and that which is misleading, dishonest, and improper in order to create public confidence in honest and legitimate advertising and honest and legitimate business, and to prevent the public from being misled by persons using unfair advertisements or unfair business methods.

"By all proper means to educate and inform merchants, manufacturers, and other business men as to honest, fair and legitimate advertising and business methods and the discouragement of unfair competition and unfair dealings with the public * * *"

See: Transcript of Record, p. 4, *Jones case*, supra.)

By comparison this Honorable Court will readily see the intent and purpose in the above powers and those contained in the articles of incorporation of the petitioner, the Better Business Bureau of Washington, D. C., Inc., which we restate as follows:

"* * * the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancement of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as "An Act to prevent fraudulent advertising in the District of Columbia."

The verbiage in the foregoing paragraphs, while somewhat different, nevertheless both of them, as heretofore stated, seek to attain the same object, that is to educate business men, bankers and professional men and the public by teaching of fair competition, honesty, integrity, and truthfulness to gain a very high objective and standard in the conduct of various businesses and professions thereby

giving the public the advantage thereof in their daily dealings as well as teaching the public how to protect its interest as a consumer or patron. This is a point that the District Court decided in *Jones, Collector case, supra.* Among other things, District Judge Vaught said:

> "* * * One of its main objectives is to warn the unsuspecting purchaser, by pamphlets, bulletins, and radio, against the fascinating and intriguing neighborhood canvasser and impostor, who represents that he is selling articles of extremely high quality at exceedingly low cost when in fact the articles offered for sale are of inferior quality and the sales price high. It particularly warns the public against the misleading and deceptive representations of irresponsible promoters dealing in capital stocks, units in so-called common-law trusts, and other questionable securities of little or no value, to the end that people of small means and income may be protected against worthless investments." * * *

This doctrine of course was approved by the Appellate Court in affirming the decision in the *Jones case, supra.*

COMMENT ON THE DECISION OF THE LOWER COURT.

The lower court erred in holding that the petitioner was a civic institution only and not an educational institution as a basis for reaching its adverse conclusion. This same theory was advanced (as heretofore stated) by the Government before the appellate court for the 10th Circuit in the *Jones case, supra,* and that Court did not give any weight to this argument for the reason it decided, among other things that the Better Business Bureau could be not only a civic institution but also one organized and operated exclusively for educational or scientific purposes. Further, it is a public fact that many civic institutions do not have the character and scope of operations such as possessed by the petitioner. The latter has no function as a civic institution (if you would call it such) except to educate the mer-

chant or business man and the public, in order to attain its object, which is done by lectures, radio, conferences, meetings, through the press, and the printing and distribution of a very large amount of literature. While it may be regarded in a sense as a civic institution, nevertheless the facts prove that it is also clearly an organization organized and operated exclusively for educational purposes as hereinbefore stated.

The narrow and limited construction of the lower court in arriving at its decision is also in conflict and contrary to the principle adopted by the District Court in the *Jones case*, 34 Fed. Supp. 573, decided July, 1940, viz:

> "* * * Educational training is not confined to colleges, universities or even the public schools but consists, in the broadest sense, of acquiring information or inspirational suggestions which cause the individual to think and act along proper lines. Certainly, the teaching of honesty, integrity, and truthfulness is the very highest objective of an education." * * * Approved by U. S. Circuit Court of Appeals, 123 F. (2d) 767.

See Argument (B. 18).

It must be conceded that there are many institutions of a civic character that have no educational or scientific activities, nevertheless it is true that a charitable, educational or scientific institution may also be civic in some respects and the fact that it may be civic in character does not destroy its charitable, scientific or educational activities for which it was exclusively organized and operated. As heretofore stated, if the decision of the lower court was correct this petitioner could not have been organized under Section 599 of the Code of Law of the District of Columbia, but would have had to be created under an entirely different section or sections which provide for the incorporation of civic institutions in the District of Columbia.

The decision of the lower court in the instant case is also in conflict with the rule laid down by the appellate court in the case of *International Reform Federation v. District Un-*

employment Compensation Board, 76 U. S. App. D. C. 272, 131 F. (2d) 337, on the construction of the exemption clause contained in the District of Columbia Unemployment Act (B. 4-5) which is identical with the exemption contained in the Federal Social Security Act (B. 2-3), as it adopted a more liberal construction with respect to the definition of charitable, educational, and scientific institutions. In this case the court held *inter alia*

> "* * * Charity in its legal sense comprises trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the previous heads. * * *"

The lower court in differentiating between the case at bar, and the *International Reform Federation* Case, supra, lost sight of the fact that there are numerous forms of educational institutions due to the march of time. The activities of appellant in the *International Reform Federation* Case, supra, were different in character from that of the petitioner, nevertheless, its reasoning in arriving at its decision in the above case should have been applied to an institution such as that of the petitioner. In fact today there are many kinds of educational institutions operating which are not necessarily charitable in their very nature, but serve the public for the educational and scientific advancement. This latter class have received the benefit of a favorable construction of exemption acts such as in the above case and such rule of custodian has been followed by numerous courts throughout this country, among which we cite the following in addition to the Jones Case, supra:

W. Trinidad, Insular Collector, v. *Sagrada Orden De Predicadores, etc.*, 263 U. S. 578, 68 L. Ed. 458.
Hassett, Collector, v. *Associated Hospital Service Corporation of Massachusetts*, 125 F. 616.
Slocum et al. v. *Bowers*, 15 F. (2d) 400-403.
St. Louis Union Trust Company et al. v. *Burnett*, 59 F. (2d) 922-9.

Missouri Historical Society v. *Academy of Science*, 94 Mo. 459, 8 S. W. 346.
Southeastern Fair Association v. *U. S.*, 52 Fed. Sup. 219.
Oklahoma State Fair and Exposition v. *Jones, Collector of Internal Revenue*, 44 Fed. Supp. 630-2.

THE QUESTION INVOLVED APPEARS TO BE A NOVEL ONE FOR CORPORATIONS OF THIS CLASS.

The petitioner operating as a Better Business Bureau, as well as other Better Business Bureaus throughout the United States, are organizations operating for the education of business men of every character and the public and are, we might say, organizations created under the corporation laws throughout the United States of recent times as the result of the evolution of business.

These institutions have all been created within the past thirty (30) years, and therefore their rights under the law, so far as the imposition of duties or taxes, should be construed in the legal manner such as has been prescribed by the appellate courts in the case of *Better Business Bureau* v. *Jones, Collector*, and *International Reform Federation* v. *District Unemployment Compensation Board, supra.*

Congress has met this modern method by broadening the exemptions in the Federal Social Security, Unemployment and other taxing laws as will be readily perceived by the exemptions contained in the above mentioned laws, herein before set out (B. 2-5).

Further we contend that the exemption clause of the Federal Social Security Act in question (which is legislation of modern times and not an old act) here does not contain any ambiguity. This Court has decided many time that an adverse construction of a Federal Act by any governmental agency shall not prevail where the Statute in question speaks clearly, such as in the case at bar (numerous decisions having been cited in this brief covering that point), therefore we think that the appellate court erred in its decision denying this petitioner the relief it seeks, in holding

that such adverse departmental construction shall prevail. This high court has on many occasions, where such a point was involved, set aside such adverse construction as being unreasonable, incorrect, and unfair to the taxpayer. The decisions of this court in favor of the litigant seeking relief from such adverse departmental construction are clear and numerous and it would be only taking up unnecessary time of this court to cite them as additional authorities. Especially is the decision of the lower court in this case on question giving the relief sought by the petitioner, which we think is justified by the facts in this case.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that judgment of the United States Court of Appeals for the District of Columbia should be reversed.

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